IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1646 of 2001 (S/S)
(Old No. 34224 of 1999)

Chintamani
S/o Sri Mangat Ram Budakoti,
Resident of Village and P.O. Padampur,
Sukhro, Kotdwara, District Pauri Garhwal.

…… Petitioner

Versus

1. The State of U.P.
   through the Chief Secretary
   Hath Kargha Anubhag, Annaxy,
   Sachiwalaya, U.P., Lucknow.
2. The Development Commissioner/
   Director Hath Kargha, Uttarakhand,
   Sri Nagar (Pauri Garhwal).
3. Administrative Officer
   Hill Region Office of the Development
   Commissioner, Srikot, Srinagar (Pauri).
4. Additional Director
   Uttarakhand, Kotdwar,
   Pauri Garhwal.

…… Respondents

Mr. S. S. Negi, Advocate for the petitioner.
Mr. N.P. Sah, Standing Counsel for respondents No. 2 to 4.

Hon. Prafulla C. Pant, J.

Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2) By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has challenged the order dated 21.05.1997 (copy Annexure- 1 to

the writ petition) passed by respondent No. 2, dismissing the petitioner from service. Also, the order dated 23rd of June 1998 (copy Annexure- 2 to the writ petition), passed by respondent No. 1, in the departmental appeal has been challenged.

3) Brief fats of the case are that the petitioner, an Ex-Serviceman, was employed as Peon, vide order dated 16th February 1983, in the Office of Development Commissioner, Rural and Small Industries at Srinagar, District Pauri Garhwal. A charge sheet was served on the petitioner in the year 1996 and as many as four charges were drawn against him. The first charge related to the submission of false tour programme for the period 27.04.1996 to 30.04.1996. The second charge related to submission of false travelling allowance bill for the journey allegedly conducted on 16.04.1996, while actually the petitioner was on leave on said date. Third charge relates to the false tour programme submitted by the petitioner in respect of alleged official journey conducted by him on 08.08.1996, while actually he remained on leave from 02.03.1996 to 11.03.1996, in connection with marriage of his niece. And, fourth charge related to the false tour programme relating to 15th January 1996,while actually the petitioner on said date remained absent from the duty, availing restricted holiday for ‘Makar Sakranti’.

4) It appears that after considering the reply of the petitioner and the evidence on record, the Enquiry Officer found him guilty of the charges, and finally the petitioner was dismissed from service vide order dated 21.05.1997.

5) The petitioner in the earlier round of litigation, filed Civil Misc. Writ petition No. 26482 of 1997, before the Allahabad High Court. However, since, the impugned order dated 21.05.1997 itself provided that the petitioner can file departmental appeal before respondent No.1, said writ petition was disposed of by the Allahabad High Court vide its order dated 21.08.1997, directing the appellate authority to decide expeditiously the departmental appeal file by the petitioner. Said departmental appeal was dismissed vide impugned order dated 23rd of June 1998 (copy Annexure-4 to the writ petition). Hence, this writ petition was filed before the Allahabad High Court on 12.08.1999. The writ petition is received by transfer from said Court, under Section 35 of the U.P. Re-organization Act 2000, for its disposal.

6) The ground on which the impugned orders are challenged are that the petitioner was not been given opportunity of being heard in the enquiry. It is also alleged that the punishment awarded is excessive, as the petitioner is a poor Class IV employee. It is further pleaded that infect, no claim for journey has ever been submitted by the petitioner, nor any amount is paid in respect of false journey shown by the petitioner.

7) Counter affidavits are filed on behalf of the respondents, in which defending the impugned orders, it is state that the petitioner was given full opportunity of being heard before the impugned order dismissing him from service is passed. In the supplementary counter affidavit, it has been stated that the petitioner is not entitled to the reliefs claimed by him. It is not a case of negligence on the part of

the petitioner. Rather, he submitted the tour programme of January 1996 to April 1996 only in the month of June 1996, which itself rules out all possibilities of the innocence of the petitioner.

8) Learned counsel for the petitioner argued that no opportunity of being heard was given to the petitioner before passing the impugned order dismissing him from service. However, the papers on record suggests otherwise. The charge sheet, a copy of which is Annexure -7 to the counter affidavit, appears to have been served on the petitioner on 31.10.1996. In response to said charge sheet, the petitioner appears to have submitted his reply on 28.11.1996. The impugned order dated 21.05.1997 shows that not only the petitioner submitted his reply, but he also got three witnesses examined, in his defence. However, the said witnesses did not support the case of the petitioner. Annexure 7-G to the counter affidavit, shows that the petitioner was given a show cause notice before the impugned order dated 21.05.1997 was passed, giving him opportunity to show as to why he should not be awarded major punishment. Reply to said show cause notice was given by the petitioner, a copy of which is Annexure-8 to the writ petition, in which the petitioner practically admitted the charge and took the plea that he is an old man and feels sorry for the misconduct.

9) This Court in its writ jurisdiction cannot go into the disputed facts, and it can only see whether the orders passed by the authorities are lawful, or not? From the above discussion it is clear that sufficient opportunity of being heard was given to the petitioner before the impugned order is passed against him. In the facts and circumstances of the

case, punishment awarded too cannot be said to be excessive.

10) Learned counsel for the petitioner drew attention of this Court to the principle of law laid down in ***Union of India Vs. Mohd. Ramzan Khan; reported in (1991) 1 Supreme Court Case 588,*** and it is argued that the petitioner was not served with the copy of the enquiry report. I have gone through the aforesaid case law. Through, Article 311(2) of the Constitution of India, does not require second opportunity of being heard at the stage of awarding of punishment, but in the present case, even that notice was given to the petitioner. The petitioner at that stage could have asked for copy of the enquiry report. Instead, the petitioner rather admitted his guilt, in reply to the show cause notice given to him at the stage of awarding of punishment. In the circumstances, the aforesaid case law does not help the petitioner.

11) The impugned order dated 23rd of June 1997, passed by respondent No. 1 in the departmental appeal also shows that the pleas raised by the petitioner in the departmental appeal were considered and the said appellate authority concurred with the opinion of the disciplinary authority.

12) In the above circumstances, this Court is of the view that this writ petition has no force, and the same is liable to be dismissed. Accordingly, the writ petition is dismissed.

(Prafulla C. Pant, J.)

Dt. October 23, 2007.
H.Negi